

From: Carlin, Jayne
To: Jeff Dillen - NOAA Federal; Sweeney, Stephen; Byrne, Jennifer
CC: Allison Castellan; Wayne, Don
Sent: 7/16/2014 7:15:42 PM
Subject: Review of Specific Comments Letters for Legal Issues Missed by Technical Team (OR CZARA)
Attachments: AG Opinion Dec. 20, 2006-FINAL.PDF; CZARA Farm Bureau Cmt 71.pdf; CZARA OFIC Cmt 77.pdf; NWEA Comments on Oregon's CNPCP.pdf; State of Oregon CZARA submittal 3-20-14.pdf

Hi attorneys,

Please review to make sure there are no legal issues raised in the attached letters that the Technical Team has not yet discussed with you already.

Thanks Steve for your willingness to take the first cut.

Jayne

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<http://www.epa.gov/r10earth/tmdl.htm>

From: Carlin, Jayne
Sent: Friday, April 25, 2014 4:17 PM
To: Wayne, Don; Croxton, Dave; Henning, Alan; Wu, Jennifer; allison.castellan@noaa.gov; Solloway, Chris; Goo, Robert; Byrne, Jennifer; Jeff Dillen - NOAA Federal; Sweeney, Stephen
Cc: Psyk, Christine; Hall, Lynda
Subject: Agenda: (10 AM or 1 PM) April 28 OR CZARA Legal Focus Non-Responsive or Dave's Office

OR CZARA: Legal Focus
April 28 at 10 AM PST or 1 PM EST
Call In Number Non-Responsive or Dave Croxton's Office

AGENDA

- General news and updates (including whether to contact the state regarding the extension)
- Extension & May 7th Mtg with NEWA (JB) (See emails below)
- Legal Authorities for New Development & OSDS (Don)(see below and attached AG Opinion & Oregon Submittal)
- Legal authority for additional measures at time of initial decision (forestry) and at the present (agriculture)(see attached letters from Farm Bureau & OFIC)
- Determination of legal issues/vulnerabilities raised in NWEA's letter* (attached)
- Preparing for May 1 Managers Mtg: Topics to cover, input to request

*The process for legal review of the comments will be discussed, not the content of the letter.

Legal Authorities

Ex. 5 - Attorney Client

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Background on Enforceable Policies and Mechanisms for CZARA. See:

<http://coastalmanagement.noaa.gov/nonpoint/docs/6217adminchanges.pdf>

and

<http://coastalmanagement.noaa.gov/nonpoint/docs/epmmemo.pdf>

NOAA and EPA will approve those program elements for which states have proposed voluntary or incentive-based programs, backed by existing state enforcement authorities, if the following is provided:

1. a legal opinion from the attorney general or an attorney representing the agency with jurisdiction for enforcement that such authorities can be used to prevent nonpoint pollution and require management measure implementation, as necessary; 2. a description of the voluntary or incentive-based programs, including the methods for tracking and evaluating those programs, the states will use to encourage implementation of the management measures; and 3. a description of the mechanism or process that links the implementing agency with the enforcement agency and a commitment to use the existing enforcement authorities where necessary.

For the NDMM, Oregon DEQ has committed to using one of the following 3 options of direct regulatory actions available to that agency to require DMAs to implement the NDMM, but the agency is not yet willing to commit to exactly which one at this point:

- 1) Develop and implement a post-construction general permit that would meet the NDMM and would align with (or be combined with) Oregon's existing construction site runoff NPDES general permit (1200-C/CN), either through DEQ's permitting authority [ORS 468B.050] or by requesting that the State's Environmental Quality commission (EQC) adopt a rule requiring these permits [ORS 4608B.020].
- 2) Develop a rule for all DMAs to meet the NDMM. The rule would require the adoption of the State's EQC [ORS 468.020; 468B.020; and 468B.110].
- 3) Designate local governments in the coastal nonpoint management area as a regulated MS4 [federal - 40CFR 122.26 and state - ORS 468B.035]

May 7 Meeting with NWEA & Extension Request

See below. Based on my off-the-cuff suggestion that we could talk about CZARA deadline for a few minutes at the May 7 meeting, it now appears that NWEA wants a more substantive discussion. I said I would make inquiries.

Jennifer Byrne

Office of Regional Counsel, EPA Region 10

206-553-0050, byrne.jennifer@epa.gov

From: Paul Kampmeier [<mailto:pkampmeier@wflc.org>]

Sent: Tuesday, April 22, 2014 12:29 PM

To: Byrne, Jennifer

Subject: RE: CZARA FOIA and decision timeline

Hi Jennifer--

Following up on my email below, would the morning of May 7 work for you and agency staff?

P

From: Paul Kampmeier

Sent: Monday, April 21, 2014 3:41 PM

To: 'Byrne, Jennifer'

Subject: CZARA FOIA and decision timeline

Hi Jennifer—

Thank you very much for your work on the CZARA FOIA and for the status update you provided me last week. I've had a chance to talk with Nina Bell at Northwest Environmental Advocates and she would like to work with you and EPA to establish a deadline by which EPA will provide all responsive records and an index of withheld records. I know you mentioned that EPA isn't ready to commit to a deadline, but given the delay to date Nina would like to get a workable date on the calendar so she knows when she can expect completion of the FOIA response.

Also, during our call you mentioned that EPA and NOAA are probably going to ask NWEA for an extension of the deadline for making a final decision on Oregon's coastal nonpoint pollution control program. You suggested a meeting in early May, when Nina will already be in Seattle, to see if the parties to the settlement agreement can work out an agreed extension. Which days in early May work for you and agency staff? Also, should I contact someone at NOAA to bring them into the discussion, or can you do that?

As to the content of that meeting, Nina would like to hear the agencies' extension proposal and then discuss how to phase the FOIA and final CZARA decision work going forward, so it's workable. She would like to resolve any decision deadline issues before (not after) the court-ordered deadline of May 15 because she's very interested in avoiding a repeat of what happened late last year, when EPA and NOAA missed the court-ordered deadline for proposing the final decision. Finally, she asked me to let you know that while she is open to extending the final decision deadline she is not really open to doing that in a way that continues full CWA and CZMA grant funding to Oregon after May 15. As you may be aware, paragraph two of the settlement agreement states: "After May 15, 2014, EPA and NOAA shall not award full CWA Section 319 or CZMA Section 306 grant funds to Oregon based on any conditional approval of Oregon's CNPCP." I'm mentioning this to you now because I want to give you a heads up that in any discussion about an extension NWEA will want to be clear about what's being extended.

Thank you again for reaching out and letting us know where things stand. I really appreciate that and will look forward to our meeting and to sorting this stuff out. Feel free to call me if it would be easier to discuss this or scheduling more by telephone.

P

Cheers,

Jayne

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